

Determination of debt deficiency after foreclosure
(SB 452 by Krier/P. Hill)

DIGEST: SB 452 would have permitted a debtor whose property had been foreclosed upon by a creditor and sold at a foreclosure sale to seek a court's determination of the fair market value of the property. The deficiency on the debt still owed by the debtor would have been the difference between the fair market value and the amount owed on the mortgage loan, rather than the difference between the amount actually paid for the property at the foreclosure sale and the amount owed. This provision was added as a House amendment to a bill making various technical corrections to the Property Code.

GOVERNOR'S
REASON
FOR VETO:

By definition, fair market value should be that value which a property can bring on the day of the sale. The Property Code contains ample notice procedures and protections for debtors and creditors, as well as for prospective purchasers of foreclosed real property. In particular, there is ample notice of the day of sale to all parties concerned.

This change in the method of determining the amount of a deficiency is unwise and inappropriate. This bill has the potential to result in numerous lawsuits and further delay the collection of deficiency judgments. Such delays and further litigation are not in the State's best interests.

RESPONSE:

Sen. Cyndi Krier, the author of the original version of SB 452, said: "SB 452 was vetoed as the result of an amendment attached to it on the House floor. I understand the governor's concerns about changes in our state's foreclosure procedures. Because of similar concerns, I worked closely during the final weeks of the session with proponents and opponents of the amendment to develop compromise language which consumers, developers and financial institutions all agreed to support. They did not believe it would have resulted in 'numerous lawsuits' as the governor suggested because the final language provided for the courts to determine 'fair market value' only if the lender brought suit to collect a deficiency judgment. Nor would it have led to 'further delay' as the

governor stated; indeed, the measure shortened the statute of limitations from four to two years," said Sen. Krier.

"I believe Gov. Clements felt major changes such as this deserve more careful study. Therefore, we shall work during the interim to hold hearings of the Senate Jurisprudence Committee and House Judicial Affairs Committee to review these and other foreclosure issues," Sen. Krier said.

Rep. Terral Smith, the author of the House amendment to SB 452 adding the provision for determining of the deficiency amount, said: "It was unfortunate that SB 452 was vetoed. It was a compromise bill and a fairness bill that helped balance the equities when a loan defaults. The reasons given by the governor are fairly false and shallow. Litigation will increase because of the veto. There is lots of litigation out there, including two cases before the Supreme Court. Now, instead of legislative law, we will have court law. We have lost control of the issue. It will be time-consuming and expensive and we don't know how it will turn out."

"It would be good to slow down deficiency judgments. It will be entrepreneurs who will rebuild Texas, not financial institutions. Financial institutions keep their foot on the necks of those who we need to work and rebuild the state. The veto was bad, and the reasons given for the veto were bad."

NOTES:

The House Research Organization analysis of the original version of SB 452, prior to its amendment, appeared in the May 15, 1989 Daily Floor Report.